

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 159 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

and

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 No

COMMISSIONER OF INCOME TAX

Versus

KAIRA DIST. CO.OP. MILK PRODUCERS UNION LTD.

Appearance:

1. INCOME TAX REFERENCE No. 159 of 1991
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. By way of this Reference at the instance of the Commissioner of Income-tax, Gujarat-II, the following question arising out of I.T.A. No. 929/Ahd/1983 for A.Y. 1979-80, is referred for opinion:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that 10% of expenses incurred under section 35-C of the Income-tax Act, 1961 were allowable as weighted deduction as claimed ?"

2. The learned standing counsel, Mr.M.R.Bhatt, for the applicant, fairly conceded that the issue is squarely covered by the earlier judgment of this Court in the matter of the same assessee, which judgment is reported in 253 ITR page 766 and to which one of us (D.A. Mehta, J.) was a party.

3. In light of the ratio laid down in the aforesaid decision of this Court, the question referred to us at the instance of the Revenue stands concluded against the Revenue. The question referred to us is, therefore, answered in the negative, i.e. in favour of the Assessee and against the Revenue. The Reference stands disposed of accordingly. There will be no order as to costs.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)